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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
Telecommunications Carriers' Use )  
of Customer Proprietary Network )  
Information and Other )  
Information Request for Deferral )  
and Clarification )

CC Docket No. 96-115

To: The Commission

**COMMENTS OF THE RURAL CELLULAR ASSOCIATION**

The Rural Cellular Association ("RCA"),<sup>1</sup> by its attorneys, hereby submits comments in support of the Request for Deferral and Clarification of certain of the Commission's customer proprietary network information ("CPNI") rules filed by the Cellular Telecommunications Industry Association ("CTIA").<sup>2</sup> The Commission should defer the application of certain CPNI rules on wireless carriers pending its focused consideration on the negative consequences such application will have on the public interest. In support thereof, RCA shows the following:

**THE CPNI RULES SHOULD BE DEFERRED PENDING ASSESSMENT OF THEIR IMPACT ON SMALL AND RURAL WIRELESS SERVICE PROVIDERS**

CTIA requests that the Commission delay implementation of Sections 64.2005(b)(1) and (b)(3) of the recently adopted CPNI

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<sup>1</sup> RCA is an association representing the interests of small and rural cellular licensees providing commercial services to subscribers throughout the nation. Its member companies provide cellular service to predominantly rural areas where more than 6 million people reside. Formed in 1993 to address the distinctive issues facing rural cellular service providers, the membership of RCA includes affiliates of the only entities originally eligible for "B" block cellular licenses -- wireline telephone companies -- as well as rural "A" block carriers. RCA also represents small and rural PCS carriers.

<sup>2</sup> Public Notice, DA 98-836 (rel. May 1, 1998).

rules because they restrict the traditional marketing techniques of cellular service providers. Existing marketing methodologies are critical to the efficient provision of cellular service; application of the new rules to wireless carriers will, therefore, disserve cellular customers. Furthermore, the new CPNI rules impose restrictions on wireless carriers that Congress did not intend.

The 180-day deferral of the CPNI rules as applied to cellular and PCS carriers will enable the Commission to consider the substantial and long-term negative impact that the rules will have on cellular/PCS providers' ability to furnish customers with the most advanced and cost-effective services. Therefore, it is in the public interest to defer the application of the CPNI restrictions contained in Sections 64.2005(b)(1) and 64.2005(b)(3) pending the Commission's further consideration.

**The Recently Adopted CPNI Rules Stifle Competition.**

CTIA draws the Commission's attention to two specific rule sections which impede carriers' ability to market and provide services effectively and efficiently. Section 64.2005(b)(1) restricts carriers' use of CPNI to market mobile handsets to existing cellular customers. The application of this rule to wireless carriers is based on the incorrect assumption that handsets are functionally equivalent to landline CPE and that Section 222 of the Telecommunications Act requires that mobile handsets and landline CPE be treated the same. Similarly, the public interest would be served by deferral of the application of

Section 64.2005(b)(3) of the CPNI rules, which prohibits a cellular carrier from using CPNI without prior customer approval to provide incentives to customers to remain with their provider, when the intention to change providers is known, but has not yet been effectuated. Application of this rule would eliminate completely subscribers' traditional benefit from the competitive response of wireless carriers.

The restrictions imposed by the above-noted CPNI rules will stifle competition in the cellular/PCS industry. On this basis, RCA supports CTIA's call for deferral of the CPNI rules while the Commission examines the far-ranging impact of its rules on both industry marketing practices and also on cellular and PCS consumers.

The CPNI rules and their fast-track implementation schedule disadvantage RCA member companies to an even greater degree than their larger counterparts. As small, rural carriers, RCA members' potential customer bases are smaller, making efficient marketing programs even more critical to the provision of competitive service. The current marketing practices that would be prohibited by Sections 64.2005(b)(1) and (3) would seriously impair their ability to compete effectively and efficiently. As CTIA noted, "churn" is a fact of life in the cellular and PCS industries, and a company's ability to respond to the competition, and make it worthwhile for a customer to remain a customer, is critical to the company's survival. The Commission may not fully appreciate the restraints that the new CPNI rules noted above place on small rural

cellular/PCS carriers, and for that reason alone, it should defer the effective date of the rules in order to develop a record on this critical issue.

As CTIA notes, the CPNI rules superimpose landline telephony concepts on cellular/PCS operations. Because these mobile services do not fall neatly within the landline construct that is the basis for the FCC's "total service approach" to CPNI, the result is a set of restrictions that do not make sense in the context of the cellular/PCS industries' environment.

CTIA correctly points out that the CPNI rules as applied to cellular/PCS are at odds with the Commission's pro-competitive objectives for these industries. They are also at odds with the FCC's objective of promoting advanced services in rural areas.<sup>3</sup> As such, their impact should be examined thoroughly, and the application of these rules should be modified to conform to these important public interest objectives.

#### CONCLUSION

The CPNI rules challenged by CTIA drastically change the marketing environment in which cellular/PCS carriers operate, and for that reason the Commission should delay implementation of Sections 64.2005(b)(1) and (b)(3) of the rules for cellular/PCS carriers until the impact on carriers and their customers is fully evaluated.

For the foregoing reasons, it is respectfully requested that

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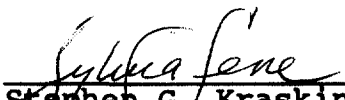
<sup>3</sup> See, e.g., 47 U.S.C. §254(b)(3) and (b)(4).

the Commission grant CTIA's Request and defer its CPNI rules as applied to cellular and PCS entities for 180 days while it examines the applicability of its rules to the cellular/PCS industry, particularly the impact on small, rural cellular and PCS carriers.

Respectfully submitted,

THE RURAL CELLULAR ASSOCIATION

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## **CERTIFICATE OF SERVICE**

I, Shelley Bryce, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Comments of The Rural Cellular Association", was served on this 8th day of May 1998, by first class, U.S. Mail, postage prepaid to the following parties:

  
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